

Message Text

CONFIDENTIAL

PAGE 01 STATE 256640

64

ORIGIN SS-25

INFO OCT-01 ISO-00 SSO-00 NSCE-00 CCO-00 /026 R

DRAFTED BY L:SMSCHWEBEL:CDJ

APPROVED BY D: ACTING SECRETARY

T:CMAW

ARA:WROGERS

IO:RMOREY (SUBS)

EB:JKATZ

S/S: JPMOFFAT

L:GALDRICH

----- 051063

O 210150Z NOV 74 ZFF4

FM SECSTATE WASHDC

TO USDEL KYOTO IMMEDIATE

C O N F I D E N T I A L STATE 256640

EXDIS, TOSEC 210

E.O. 11652: GDS

TAGS: UNCTAD, EGEN

SUBJ: CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES

REFS: (A) SECTO 68 (B) TOSEC 83

FOR THE SECRETARY FROM ACTING SEC, MAW AND ROGERS

1. AT THIS JUNCTURE, IT IS UNCLEAR WHETHER, IF CERDS COMES TO A VOTE IN UNGA, USG WOULD BE ALONE IN VOTING AGAINST IT AS A WHOLE OR WHETHER IT WOULD BE JOINED BY SOME EUROPEANS AND JAPAN AND POSSIBLY CANADA. OUR BEST CURRENT ESTIMATE IS THAT FRG AND PROBABLY JAPAN WOULD JOIN USG IN NEGATIVE VOTE AS A WHOLE; THAT UK, DENMARK, ITALY AND CANADA MAY WELL VOTE NEGATIVELY ON WHOLE BUT MAY ABSTAIN; AND THAT FRANCE AND SOME OTHERS WILL PROBABLY ABSTAIN. WE DO NOT AGREE WITH RABASA'S INFORMATION CITED REFTEL (B) THAT USG IS ONLY GOVT PLANNING TO VOTE AGAINST CHARTER AS A WHOLE.

2. THE ARGUMENTS FOR USG VOTING AGAINST CHARTER AS A WHOLE AND AGAINST OUR ABSTAINING, EVEN IF EUROPEANS

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 STATE 256640

DO NOT VOTE WITH US AGAINST THE CHARTER, ARE:

(A) THE USG HAS REPEATEDLY PRESSED EC, JAPAN, AUSTRALIA AND CANADA TO VOTE AGAINST CHARTER AS A WHOLE, AND HAS TOLD THEM THAT IT INTENDS TO DO SO; IT HAS INFORMED MEXICO OF ITS INTENTION TO VOTE AGAINST AN UNACCEPTABLE CERDS AS A WHOLE; AND WORD HAS SPREAD IN UN THAT USG

IS COMMITTED TO VOTING AGAINST A CHARTER THAT IS SERIOUSLY OBJECTIONABLE. USG CREDIBILITY IN UN, DAMAGED BY OUR PERFORMANCE AT SIXTH SPECIAL SESSION LAST SPRING, WOULD SUSTAIN FURTHER SERIOUS INJURY IF, AFTER ALL THIS, WE WERE TO REVERSE AND ABSTAIN; AND OUR STANDING WITH OUR EUROPEAN ALLIES AND JAPAN WOULD SUFFER. THIS IS A POINT WHICH AMB SCALI HAS ESPECIALLY EMPHASIZED.

(B) IF USG WERE TO FAIL TO VOTE AGAINST CHARTER AS A WHOLE, VARIOUS GROUPS IN PRIVATE SECTOR, INCLUDING AMERICAN BAR ASSOCIATION, US COUNCIL OF INT'L CHAMBER OF COMMERCE, NAM, ETC., WOULD BE MOST CRITICAL, AS THEIR CONTINUING REPRESENTATIONS DEMONSTRATE.

(C) USG FAILURE TO VOTE AGAINST CHARTER AS A WHOLE WOULD MEAN THAT THE CHARTER WOULD BE ADOPTED WITH NO NEGATIVE VOTES ON IT AS A WHOLE, FOR, IF USG INFORMS ITS ALLIES THAT IT WILL ABSTAIN, THEY SURELY WILL; AND THE GROUP OF 77 AND COMMUNIST STATES WILL THEREUPON TRUMPET THE CHARTER AS THE NEW INT'L LAW GOVERNING THE NEW INT'L ECONOMIC ORDER, EMPHASIZING THE LACK OF ANY NEGATIVE VOTE ON THE WHOLE CHARTER;

(D) IN THIS, THEY WOULD FOLLOW UN PRECEDENT. E.G., THE 1960 DECLARATION ON COLONIALISM WAS ADOPTED BY UNGA WITHOUT NEGATIVE VOTES BUT WITH ABSTENTIONS; THE 1965 DECLARATION ON NON-INTERVENTION WITH NO NEGATIVE VOTE AND WITH ONE ABSTENTION; BUT IN BOTH CASES THE DEVELOPING COUNTRIES HAVE BEEN ABLE TO PORTRAY THIS ABSENCE OF OPPOSITION AS SUBSTANTIALLY EQUIVALENT TO UNANIMITY. THE DECLARATION ON COLONIALISM CAME TO BE ACCEPTED AS UN HOLY WRIT, JUST AS IF IT HAD BEEN ADOPTED UNANIMOUSLY; AND THE FRIENDLY RELATIONS DECLARATION FAITHFULLY

CONFIDENTIAL

PAGE 03 STATE 256640

INCORPORATED PROVISIONS OF THE DECLARATION ON NON-INTERVENTION AS IF THEY HAD BEEN ADOPTED UNANIMOUSLY, AND DECLARES THEM TO BE INT'L LAW.

(E) SUCH RESOLUTIONS AND DECLARATIONS COME TO BE REPEATED IN SUBSEQUENT UN RESOLUTIONS, WHICH FAIL TO RECALL OR REITERATE AN INITIAL NEGATIVE VOTE ON A PARA; AND THESE SUBSEQUENT RESOLUTIONS TEND TO BE ADOPTED

UNANIMOUSLY, OR AVOIDED ONLY WITH DIFFICULTY (AS CURRENTLY IN RESPECT OF THE RESOLUTIONS OF THE SIXTH SPECIAL SESSION). AS OPINIONS IN THE INT'L COURT OF JUSTICE INDICATE, UNCONTESTED UNGA REPETITION OF RESOLUTIONS CAN LEAD TO THEIR CONTENT BEING TREATED AS DECLARATORY OF CUSTOMARY INT'L LAW. MEXICO HAS SO ARGUED AT CURRENT SESSION OF UNGA, AND THIS SESSION'S RES. ON ICJ MAY BE SAID TO LEND SOME SUPPORT TO ITS ARGUMENT.

(F) THUS, OVER A PERIOD OF TIME AS THE CHARTER IS INCREASINGLY CITED AS AN AUTHORITATIVE INTERPRETATION OF THE INT'L LAW GOVERNING INT'L ECONOMIC RELATIONS, THE EFFECTIVENESS OF NEGATIVE VOTES ON PARAS AS CONTRASTED WITH WHOLE OF CHARTER WILL FADE. HOWEVER, IF USG VOTES AGAINST THE CHARTER AS A WHOLE, AND MAINTAINS THAT, BECAUSE OF ITS NEGATIVE VOTE AS WELL AS OTHER REASONS, IT CANNOT HAVE VALUE AS AN INSTRUMENT DECLARATORY OF INT'L LAW, ITS POSITION ON THE PREJUDICIAL CONTENT OF THE CHARTER WILL BE FAR BETTER PROTECTED THAN IT CAN BE BY MERE NEGATIVE VOTES AGAINST OBJECTIONABLE PARAS.

3. WE ARE CONFIRMED IN THIS RECOMMENDATION FOR A VOTE AGAINST CHARTER AS A WHOLE

-- BY OUR OWN CONVICTION
THAT THE LATEST CHARTER DRAFT WHICH MEXICO SEEMS DETERMINED TO PUT TO UNGA ON A TAKE-IT-OR-LEAVE-IT BASIS IS INCOMPATIBLE IN SEVERAL RESPECTS WITH IMPORTANT US NATIONAL INTERESTS. IF USG WERE TO FAIL TO VOTE AGAINST CHARTER AS A WHOLE, IT WOULD APPEAR TO MANY THAT IT WAS ABANDONING POSITIONS IT HAS RIGHTLY HELD FOR DECADES.

4. YOU SHOULD KNOW THAT THERE IS WIDESPREAD SUPPORT
CONFIDENTIAL

CONFIDENTIAL

PAGE 04 STATE 256640

AMONG GROUP OF 77, AS WELL AS WESTERN AND EASTERN STATES, FOR PUTTING OFF ISSUE TO 1975 AND HAVING ANOTHER SESSION OF UNCTAD WORKING GROUP. IT IS AT MEXICO'S SOLE INSISTENCE THAT UNGA IS BEING DRIVEN TO A VOTE. INGERSOLL

CONFIDENTIAL

NNN

Message Attributes

Automatic Decaptioning: Z
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CERDS, TOSEC 210, UNGA RESOLUTIONS, MEETING VOTING RECORDS
Control Number: n/a
Copy: SINGLE
Draft Date: 21 NOV 1974
Decaption Date: 28 MAY 2004
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: CollinP0
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974STATE256640
Document Source: CORE
Document Unique ID: 00
Drafter: SMSCHWEBEL:CDJ
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D740336-0636
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19741123/aaaaatke.tel
Line Count: 158
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN SS
Original Classification: CONFIDENTIAL
Original Handling Restrictions: EXDIS
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: EXDIS
Reference: (A) SECTO 68 (B) TOSEC 83
Review Action: RELEASED, APPROVED
Review Authority: CollinP0
Review Comment: n/a
Review Content Flags:
Review Date: 18 SEP 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <18 SEP 2002 by martinml>; APPROVED <13 MAR 2003 by CollinP0>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES
TAGS: EGEN, JA, UNCTAD
To: KYOTO
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005